

# ATTACHMENT B

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the Liquidation of Bernard L. Madoff  
Investment Securities LLC,

Plaintiff,

v.

JACOB M. DICK REV LIVING TRUST DTD 4/6/01, individually and as  
tenant in common,  
ESTATE OF JACOB M. DICK, as grantor of the Jacob M. Dick Rev Living  
Trust Dtd 4/6/01,  
ANDREA J. MARKS, as trustee and beneficiary of the Jacob M. Dick Rev  
Living Trust Dtd 4/6/01, as executor and beneficiary of the Estate of Jacob M.  
Dick, and as trustee of the Article 8.1 Trust created under the Jacob M. Dick  
Rev Living Trust Dtd 4/6/01,  
R.D.A., a minor, as beneficiary of the Article 8.1 Trust created under the Jacob  
M. Dick Rev Living Trust Dtd 4/6/01,  
RIO JOCELYN BREEN, as beneficiary of the Article 8.1 Trust created under  
the Jacob M. Dick Rev Living Trust Dtd 4/6/01,  
ARTICLE 8.1 TRUST,  
SUZANNE BREEN, as beneficiary of the Estate of Jacob M. Dick and the  
Jacob M. Dick Rev Living Trust Dtd 4/6/01, and  
DOUGLAS J. STURLINGH, as beneficiary of the Estate of Jacob M. Dick and  
the Jacob M. Dick Rev Living Trust Dtd 4/6/01,

Defendants.

Adv. Pro. No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

Adv. Pro. No. 10-04570 (SMB)

**EXPERT REPORT OF  
MATTHEW B. GREENBLATT, CPA/CFF, CFE  
SENIOR MANAGING DIRECTOR  
FTI CONSULTING, INC.**

**PRINCIPAL BALANCE CALCULATION  
AS APPLIED TO  
THE DICK LIVING TRUST DEFENDANTS**

**June 5, 2019**

**Table of Contents**

	<b>Page</b>
<b>I. INTRODUCTION.....</b>	<b>1</b>
<b>II. DESCRIPTION OF ACTIVITY IN THE DICK LIVING TRUST ACCOUNT AND THE TRANSACTIONS IMPACTING THE PRINCIPAL BALANCE CALCULATION.....</b>	<b>2</b>
<b>A. Summary of Activity in BLMIS Account 1CM325 and the Inter-Account         Transfers Into BLMIS Account 1CM884 and the Dick Living Trust Account....</b>	<b>3</b>
<b>B. Description of the Inter-Account Transfers and Cash Deposit Into the Dick         Living Trust Account .....</b>	<b>4</b>
<b>C. Description of the Cash Withdrawals Out of the Dick Living Trust Account .....</b>	<b>4</b>
<b>III. SIGNATURE AND RIGHT TO MODIFY .....</b>	<b>5</b>
<b>IV. LIST OF EXHIBITS .....</b>	<b>6</b>

## I. INTRODUCTION

1. As described in my Expert Report regarding the Methodology for the Principal Balance Calculation dated November 15, 2012 (the “Principal Balance Calculation Report”), FTI Consulting, Inc. (“FTI”) was retained by Baker & Hostetler LLP, on behalf of the Trustee, to, among other things, reconstruct the books and records of BLMIS. I am a Senior Managing Director at FTI. Additional information regarding my professional experience and recent testimony is included in my Curriculum Vitae annexed hereto as **Exhibit 1**.

2. As part of FTI’s reconstruction of the books and records of BLMIS, chronological listings of all cash and principal transactions for every BLMIS customer account were compiled. These chronological listings provided the foundation to calculate every BLMIS account holder’s principal balance on a daily basis for all dates from April 1, 1981 through December 11, 2008 (the “Principal Balance Calculation”).

3. The Principal Balance Calculation Report explains the methodology of the Principal Balance Calculation and describes the relevant documents and data that were maintained by BLMIS. Accordingly, this report should be read in conjunction with the Principal Balance Calculation Report.<sup>1</sup>

4. This report specifically applies the methodology of the Principal Balance Calculation to the BLMIS account associated with Jacob M. Dick Rev Living Trust DTD 4/6/01, Estate of Jacob M. Dick, Andrea J. Marks, R.D.A., a minor, Rio Jocelyn Breen, Article 8.1 Trust, Suzanne Breen, and Douglas J. Sturlingh (collectively, the “Defendants”), in the above-captioned litigation, and provides a description of the cash and principal activity in the BLMIS accounts impacting the Principal Balance Calculation for BLMIS Account 1CM883 (the “Dick Living Trust Account”).<sup>2</sup>

5. This report has been prepared in connection with the above-captioned litigation and is to be used only for the specific purposes of this lawsuit. It is not to be used for any other

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<sup>1</sup> The opinions that I render in the Principal Balance Calculation Report, the documents that I considered in connection with that Report, and the accompanying Exhibits to that Report, are all incorporated by reference. All capitalized terms not defined herein shall have the meaning ascribed to them in the Principal Balance Calculation Report.

<sup>2</sup> One additional BLMIS Account, BLMIS Account 1CM325 under the name of “JACOB M DICK REV LIVING TRUST DTD 4/6/01 AND JUNE DICK TIC,” is also at issue in the above-captioned litigation. However, there were no cash withdrawals from this account within the two-year period prior to December 11, 2008; therefore, the description of activity and the transactions that impact the Principal Balance Calculation for BLMIS Account 1CM325 have been excluded from this report.

purpose without the express written consent of FTI. If called upon to testify in this matter, I intend to provide testimony regarding my analyses and conclusions consistent with this report. FTI is being compensated at a rate of \$670 per hour for my professional time incurred in performing the work necessary to prepare this report. FTI's fees are not contingent on the conclusions reached in this report or the outcome of the above-captioned litigation.

6. The documents and data that I considered in connection with this report are listed in **Exhibit 2**. I reserve the right to supplement my report based on any additional documents or information received.

## **II. DESCRIPTION OF ACTIVITY IN THE DICK LIVING TRUST ACCOUNT AND THE TRANSACTIONS IMPACTING THE PRINCIPAL BALANCE CALCULATION**

7. The Dick Living Trust Account was opened with BLMIS beginning in May 2004. Throughout its account history, the Dick Living Trust Account had a total of six cash deposit and withdrawal transactions. In addition to these cash transactions, there were two inter-account transfers from BLMIS Account 1CM325 into the Dick Living Trust Account.

8. The cash deposit and withdrawal transactions, as well as the inter-account transfers, all impacted the Principal Balance Calculation for the Dick Living Trust Account. Each of these transactions was reflected on the Customer Statements between May 2004 and November 2008.

9. As described in the Principal Balance Calculation Report, the amount of the funds transferred from one BLMIS account to another BLMIS account (an inter-account transfer<sup>3</sup>) is limited to the amount of principal available in the *transferor's* account at the time of the transfer. Only the portion of the inter-account transfers between BLMIS accounts for which the transferor had actual principal could be transferred. As such, all inter-account transfers have been analyzed and the transferee's account has been credited only up to the amount of principal available in the transferor's account on the day of the inter-account transfer.

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<sup>3</sup> An inter-account transfer is defined as a non-cash transaction between BLMIS customer accounts in which no new funds entered or left BLMIS, but rather a book entry occurred at BLMIS to internally adjust the balances of those accounts. These book entries did not reflect any transfers of cash because there was no actual movement of cash. Rather, these inter-account transfers merely changed reported value in the purported "equity" maintained in the BLMIS customers' accounts. (See Principal Balance Calculation Report, ¶¶17, 27-28, 32-34.)

10. Thus, in order to perform the Principal Balance Calculation for the Dick Living Trust Account, BLMIS Account 1CM325 was analyzed to determine the amount of principal available in that account that could be transferred into the Dick Living Trust Account.

11. **Exhibit 3** to this report (Summary Schedule of Cash and Principal Activity in the Dick Living Trust Account) provides a summary of the activity in the BLMIS accounts that impacted the Principal Balance Calculation for the Dick Living Trust Account.

12. **Exhibits 4A** and **4B** to this report provide detailed schedules for the Principal Balance Calculation for BLMIS Account 1CM325 and the Dick Living Trust Account, respectively.

**A. Summary of Activity in BLMIS Account 1CM325 and the Inter-Account Transfers Into BLMIS Account 1CM884 and the Dick Living Trust Account**

13. On April 27, 1995, BLMIS Account 1CM325 was opened with five cash deposits via checks in the aggregate amount of \$1,000,000, all representing principal.

14. Between April 27, 1995 and December 11, 2008, BLMIS Account 1CM325 reflected a total of 40 cash withdrawals totaling \$1,156,150.

15. On May 26, 2004 and March 7, 2005, as reflected on the Customer Statements, there were four inter-account transfers from BLMIS Account 1CM325 into BLMIS Account 1CM884 and the Dick Living Trust Account in the aggregate amount of \$2,030,836:<sup>4</sup>

- \$1,044,484 into the Dick Living Trust Account on May 26, 2004;
- \$983,823 into BLMIS Account 1CM884 on May 26, 2004;
- \$1,012 into BLMIS Account 1CM884 on March 7, 2005; and
- \$1,518 into the Dick Living Trust Account on March 7, 2005.

16. However, due to the negative principal balance in BLMIS Account 1CM325 at the time of these inter-account transfers, there was no principal available to be transferred into BLMIS Account 1CM884 and the Dick Living Trust Account. Therefore, these amounts were not credited as principal into BLMIS Account 1CM884 and the Dick Living Trust Account because these reported inter-account transfers constituted fictitious profits. (See **Exhibit 4A** for the Detailed Schedule for the Principal Balance Calculation for BLMIS Account 1CM325; see

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<sup>4</sup> Difference due to rounding.

also **Exhibit 4B** for the Detailed Schedule for the Principal Balance Calculation for the Dick Living Trust Account.)

**B. Description of the Inter-Account Transfers and Cash Deposit Into the Dick Living Trust Account**

17. On May 26, 2004, as reflected on the Customer Statements, the Dick Living Trust Account was opened with an inter-account transfer from BLMIS Account 1CM325 in the amount of \$1,044,484. However, as discussed above, this amount was not credited as principal into the Dick Living Trust Account because this reported inter-account transfer constituted fictitious profits. (See **Exhibits 4A** and **4B**.)

18. Subsequent to this initial inter-account transfer, there was one cash deposit via check into the Dick Living Trust Account in the amount of \$104,928, all representing principal.

19. On March 7, 2005, as reflected on the Customer Statements, there was an additional inter-account transfer from BLMIS Account 1CM325 into the Dick Living Trust Account in the amount of \$1,518. However, as discussed above, this amount was not credited as principal into the Dick Living Trust Account because this reported inter-account transfer constituted fictitious profits. (See **Exhibits 3, 4A** and **4B**.)

**C. Description of the Cash Withdrawals Out of the Dick Living Trust Account**

20. Between May 26, 2004 and December 11, 2008,<sup>5</sup> the Dick Living Trust Account reflected a total of five cash withdrawals totaling \$1,786,227.

21. The Principal Balance Calculation for the Dick Living Trust Account demonstrates that between May 26, 2004 and December 11, 2008, \$1,786,227 was withdrawn from BLMIS, which consisted of \$104,928 of principal and an additional \$1,681,299 of funds withdrawn in excess of principal, representing fictitious profits. The \$1,681,299 of fictitious profits was withdrawn within the two-year period prior to December 11, 2008. (See **Exhibit 4B**.)

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<sup>5</sup> The Principal Balance Calculation uses the clearing date for this check which cleared during the 90-day preference period. The cash withdrawal transaction via check listed on Exhibit 4B in the amount of \$1,509,474 was issued on September 10, 2008, but cleared on September 16, 2008. (See **Exhibit 4B**; see also **JPMSAF0070284, MADWAA00302409-MADWAA00302410** and the Principal Balance Calculation Report ¶30, n. 10.)

### **III. SIGNATURE AND RIGHT TO MODIFY**

22. This report and the exhibits contained herein present my findings and the bases thereof. To the extent that any additional information is produced by any party, I reserve the right to incorporate such additional information into my report or to modify my report as necessary.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Matthew B. Greenblatt", is written over a horizontal line.

Matthew B. Greenblatt, CPA/CFF, CFE  
Senior Managing Director  
FTI Consulting, Inc.

Dated: June 5, 2019



#### **IV. LIST OF EXHIBITS**

**Exhibit 1** – Curriculum Vitae and Testimony of Matthew B. Greenblatt

**Exhibit 2** – Documents Considered

**Exhibit 3** – Summary Schedule of Cash and Principal Activity in the Dick Living Trust  
Account

**Exhibit 4A** – Detailed Schedule for the Principal Balance Calculation for BLMIS Account  
1CM325

**Exhibit 4B** – Detailed Schedule for the Principal Balance Calculation for the Dick Living Trust  
Account